



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

Mr. Ryan S. Henry  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2011-13821

Dear Mr. Henry:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 432696.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland"), which you represent, received a request for the basic information from all reports from June and July of 2011 that involve allegations of assault or other crimes against staff members in Parkland's psychiatric department. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note you have submitted information other than the basic information from the responsive reports. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (defining basic information that must be released from law enforcement records), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered basic in *Houston Chronicle*). We note that basic information in an offense/incident report includes the identity and description of the complainant as well as a sufficient portion of the narrative to encompass a detailed description of the offense. We also note that basic information does not include identifying information of witnesses or suspects who were not arrested. Because the requestor only seeks basic information, any submitted non-basic information is not responsive to the

request.<sup>1</sup> This ruling does not address the public availability of non-responsive information, and Parkland is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 181.006 of the Health & Safety Code. Section 181.006 states that: “for a covered entity that is a governmental unit, an individual’s protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as:

[A]ny person who:

- (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2). We understand Parkland operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from Parkland. You assert the basic information consists of protected health information. Thus, you claim Parkland is a covered entity for the purposes of section 181.006 of the Health and Safety Code. However, the responsive basic information is contained in records of Parkland’s Police Department (the “department”), which you explain is a law enforcement agency. You have not demonstrated how the department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the basic information is subject to section 181.006 of

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<sup>1</sup>As we are able to make this determination, we need not address your claim under section 552.108 of the Government Code, except to note that section 552.108 does not except from disclosure basic information. Gov’t Code § 552.108(c).

the Health and Safety Code. Accordingly, none of the responsive information may be withheld under section 552.101 of the Government Code on that basis.

You next argue the responsive information is excepted from public disclosure under section 576.005 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 576.005, which provides that “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any of the responsive department records constitute records of a mental health facility that is subject to section 576.005 of the Health and Safety Code. Therefore, none of the basic information may be withheld under section 552.101 of the Government Code on this basis.

You also contend the responsive basic information is confidential under section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which is applicable to mental health records and provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

*Id.* § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Upon review, we find none of the responsive information consists of mental health records. Accordingly, Parkland may not withhold any of this information under section 552.101 of the Government Code on the basis of section 611.002(a) of the Health and Safety Code.

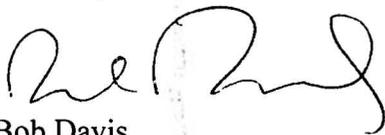
Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

The listed complainant in report number 1101775 is a psychiatric patient, whose identity is not of legitimate public concern in this instance. Therefore, we have marked the identifying information of the complainant that is protected by section 552.101 of the Government Code in conjunction with common-law privacy and may not be released as basic information. Because this individual's privacy interests are protected by withholding her identity, we conclude none of the remaining responsive information in report number 1101775 is highly intimate or embarrassing and of no legitimate public concern. You have not explained how the responsive portions of the other reports contain information that is protected by common-law privacy. Therefore, Parkland may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions, the remaining responsive information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/agn

Ref: ID# 432696

Enc. Submitted documents

c: Requestor  
(w/o enclosures)